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09/872,337	06/01/2001	A. Robert Spitzer	0594.00029	2889

7590 09/09/2003

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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 09/09/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/872,337

Applicant(s)

A. SPITZER

Examiner

Huyen Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 18-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 18-20 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 6 18-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mallette (3,718,178).

The Mallette reference discloses a single disposable apparatus for collecting and disposing liquid comprising a bedpan vessel 6,7,8 including side walls, a bottom wall, a seating surface and an inner surface; and absorption means 16 fixedly attached to and disposed on entire the inner surface for absorbing and collecting liquids within the vessel 6,7,8, wherein the vessel 6,7,8 and the absorption means 16 form a disposable single-unit apparatus.

3. Claims 1-3, 5-8, 18-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (6,070,277).

The Thomas reference discloses a single disposable apparatus for collecting and disposing liquid comprising a bedpan vessel 12 including annular rim constituting a seating surface and an inner surface; and absorption means 17 fixedly attached to and disposed on entire the inner surface for absorbing and collecting liquids within the vessel 12 (col. 3, lines 43-46), wherein the vessel and the absorption means form a disposable single-unit.

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Regarding claim 2, the apparatus includes an opening 14.

Regarding claim 3, the vessel 12 is defined as an oval-shaped receptacle as shown in Fig. 1.

Regarding claims 5 and 6, the absorption means 17 is made of a material which absorbs, collects and retains fluid (col. 2, lines 45-46) is cotton (col. 3, lines 60-61).

Regarding claims 18-20, the method of using the apparatus is inherently performed by a normal operation of the apparatus.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mallette (3,718,178).

Although the Mallette reference does not disclose that the bedpan has oval shape, it would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the Mallette bedpan in different shapes such as oval or round, wherein doing would be a matter of obvious design choice.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mallette (3,718,178).

The Mallette reference disclosed an apparatus for collecting and disposing liquids as described above.

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However, the Mallette reference is not specific as to what the vessel being made of. Disposable bedpans are commonly made of plastic for sanitary and low-cost purposes.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to fabric the Mallette vessel from plastic, since selecting a known material such as plastic or polymers on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mallette (3,718,178) in view of Williams (5,455,972).

Although the Mallette reference does not disclose that the bedpan includes a super-absorbing means such gel, solid crystals and powder, attention is directed to the Williams reference which discloses a bedpan including a highly absorbent material such as silica gel.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Mallette bedpan with silica gel in view of the teaching of the Williams reference in order to enhance the liquid absorbency capacity of the bedpan.

8. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mallette (3,718,178) in view of Stevens (GB 2 224 522) .

Although the Mallette reference is not specific as to how the absorptive means 17 is attached to the inner surface of the vessel 12 (or bag), attention is directed to the Stevens reference which discloses another apparatus for collecting and disposing liquids comprising an absorptive means 8 and an adhesive for securing the absorptive means 8 to the inner surface of the bag 1 (page 2, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an adhesive between the absorptive layer 17 and the inner

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surface of the Mallette bedpan in view of the teaching of the Stevens reference for securing the absorptive layer to the vessel.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (6,070,277).

The Thomas reference disclosed an apparatus for collecting and disposing liquids as described above.

However, the Thomas reference is not specific about the vessel being made of plastic or polymers. Waste vessels or bags are commonly made of plastic for sanitary and low-cost purposes.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to fabric the Thomas vessel from plastic, since selecting a known material such as plastic or polymers on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

10. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (6,070,277) in view of Stevens (GB 2 224 522) .

The Thomas reference discloses an apparatus for collecting and disposing liquids as described above.

Although the Thomas reference is not specific as to how the absorptive means 17 is attached to the inner surface of the vessel 12 (or bag), attention is directed to the Stevens reference which discloses another apparatus for collecting and disposing liquids comprising an absorptive means 8 and an adhesive for securing the absorptive means 8 to the inner surface of the bag 1 (page 2, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an adhesive between the absorptive layer 17 and the inner

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surface of the Thomas vessel 12 in view of the teaching of the Stevens reference for securing the absorptive layer to the vessel.

Response to Arguments

11. Applicant's arguments filed in the Amendment (Paper no. 16) on July 29, 2003 have been fully considered but they are not persuasive.

In regarding to applicant's arguments that the Thomas disposable waste bag is not bedpan vessel which includes side walls and bottom wall made of materials that support the weight of a person as the claimed invention, the Thomas waste bag is a portable and disposable receptacle having side wall and a bottom wall, of which may be used by the ill, injured or convalescent people (see col. 2, lines 65-67) can be considered as a "bedpan". The broadest interpretation of a bedpan is a receptacle that is capable of storing body waste. Applicant has the examiner read more materials into the claims than has actually been claimed. The claims do not positively recite the materials that can support the weight of a person. Furthermore, the specification of the present invention fails to clearly indicate that the bedpan of the present invention can support the weight of a person. Therefore, the claimed bedpan of the present invention does not impose or limit to a specific structure which clearly distinguishes over the Thomas waste bag.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 703-306-5504. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-308-7766 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

HL

September 8, 2003

A handwritten signature in black ink, appearing to read "Gregory L. Huson", written in a cursive style.

GREGORY L. HUSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700